



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3140/12

PJK:jld:jf

✓ m is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

10-29
by Wed,
please

D-use

✓
other miscellaneous
changes to insurance
provisions,

Regenerate
↓

- 1 AN ACT *to amend* 601.41 (4) (a); and *to create* 628.347 of the statutes; **relating**
- 2 **to:** requirements for recommendations made by insurers and insurance
- 3 intermediaries to senior consumers in annuity transactions and granting
- 4 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill prohibits an insurance intermediary, or insurer if no intermediary is involved, from making a recommendation to a person who is 65 years old or older (senior consumer) about purchasing or exchanging an annuity unless the intermediary or insurer has reasonable grounds to believe that the recommendation is suitable for the senior consumer based on facts disclosed by the senior consumer. Before making a recommendation, the intermediary or insurer must make reasonable efforts to obtain information from the senior consumer about his or her financial status, tax status, and investment objectives.

The bill requires insurers ~~not to~~ a system for supervising annuity transaction recommendations that are made to senior consumers, and provides certain requirements with which the supervisory system must comply. The bill authorizes the commissioner of insurance (commissioner) to order an insurer or intermediary to take corrective action if a senior consumer is harmed by a violation of the provisions regulating annuity transaction recommendations and authorizes the commissioner to promulgate rules to reduce or eliminate penalties for violations

✓
either to ensure that

is established and maintained or to establish and maintain its own system,

Insert A
of the provisions if, after a violation is discovered, corrective action is promptly taken for the senior consumer.

✓
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 601.41 (4) (a) of the statutes is amended to read:

2 601.41 (4) (a) The commissioner shall issue such prohibitory, mandatory, and
3 other orders as are necessary to secure compliance with the law, and may order
4 remedial measures or other corrective action.

5 SECTION 2. 628.347 of the statutes is created to read:

6 **628.347 Suitability of annuity sales to senior consumers. (1)**

7 DEFINITIONS. In this section:

8 (a) "Annuity" means a fixed or variable annuity that is individually solicited,
9 whether the product is classified as individual or group.

10 (b) "Senior consumer" means a person who is 65 years of age or older. The term
11 includes any joint owner of an annuity who is less than 65 years of age if at least one
12 joint owner is 65 years of age or older, and any prospective joint purchaser of an
13 annuity who is less than 65 years of age if at least one prospective joint purchaser
14 is 65 years of age or older.

→
****NOTE: This definition is cumbersome, but when the term "senior consumer" is first used in sub. (2), it is with respect to someone who either owns or may purchase an annuity.

15 (2) DUTIES OF INSURERS AND INSURANCE INTERMEDIARIES WITH REGARD TO
16 RECOMMENDATIONS. (a) Except as provided in par. (c), an insurance intermediary, or
17 insurer if no intermediary is involved, may not recommend to a senior consumer the
18 purchase or exchange of an annuity if the recommendation results in another
19 insurance transaction unless the intermediary or insurer has reasonable grounds

or series of insurance transactions ✓

1 to believe that the recommendation is suitable for the senior consumer on the basis
2 of facts disclosed by the senior consumer as to his or her investments, other insurance
3 products, and financial situation and needs.

→ *****NOTE:** The words in parentheses are problematic: how would the intermediary or insurer know what the result will be when the recommendation is made? Shouldn't the standard for recommendations be the same regardless of whether the recommendation actually results in another insurance transaction? In other words, why would it be okay to make a recommendation that is not suitable as long as the senior consumer doesn't actually act on it? Should this language instead be something to the effect that the recommendation must be suitable if made for the purpose of inducing another insurance transaction or for the purpose of inducing the person to acquire a product sold by the insurer or intermediary?

4 (b) Before making a recommendation described in par. (a), an insurance
5 intermediary, or insurer if no intermediary is involved, shall make reasonable efforts
6 to obtain information concerning all of the following:

→ *****NOTE:** The proposed language said that the information should be obtained before the execution of the annuity transaction, but shouldn't this information be obtained before a recommendation is made, rather than after a recommendation but before the execution of the annuity transaction based on the recommendation? How can a suitable recommendation be made without this information?

- 7 1. The senior consumer's financial status.
- 8 2. The senior consumer's tax status.
- 9 3. The senior consumer's investment objectives.
- 10 4. Any other information that is reasonably appropriate for determining the
- 11 suitability of a recommendation to the senior consumer.

12 (c) ~~Paragraph (a) does not apply with respect to a senior consumer who~~ *Insert 3-12 ✓*
13 of the following:

- 14 1. Refuses to provide relevant information requested by the insurer or
- 15 insurance intermediary.
- 16 2. Fails to provide complete or accurate information.
- 17 3. Decides to enter into an insurance transaction that is not based on a
- 18 recommendation of the insurer or insurance intermediary.

****NOTE: Subdivision 3. doesn't make sense. It has the same problem that par. (a) has. Why would it be okay for an insurer to make a recommendation that is *not* suitable as long as the senior consumer makes a choice that is not based on the recommendation? How would the insurer know what choice the senior consumer will make when the recommendation is made so that the insurer knows whether it can make an *unsuitable* recommendation or must make a *suitable* recommendation? Is there some way for subd. 3. to make sense? Is the intention that an unsuitable recommendation will not be penalized if the senior consumer does not act on it?

(d) ~~Notwithstanding~~ ~~that~~ ~~and~~ ~~the~~ ~~recommendation~~ described in par. (a) shall be reasonable under all circumstances actually known to the insurer or insurance intermediary at the time the recommendation is made.

****NOTE: I wasn't sure what the relationship was supposed to be between par. (c) and par. (d). To require a recommendation to be reasonable regardless of anything else seemed to make the most sense. It would seem to make the most sense for this subsection to require the inquiry under par. (b) before a recommendation is made and then to require the recommendation to be reasonable under the circumstances known to the insurer or intermediary.

(3) INSURER'S SUPERVISORY RESPONSIBILITY. (a) ~~Subject to~~ ~~par. (b) and (c),~~ ~~an~~ ~~insurer~~ ~~shall~~ ~~establish and maintain~~ ~~a system for supervising the insurer's and the~~ ~~insurer's intermediaries'~~ ~~recommendations to senior consumers~~ that is reasonably designed to achieve compliance with this section ~~by the insurer and its intermediaries and that includes~~ at least all of the following:

1. ~~Written~~ ~~procedures.~~ ~~→ Maintaining~~ ~~→ records~~
2. ~~Periodic reviews of its distribution methods~~ ~~that are reasonably designed to~~ ~~assist in detecting and preventing violations of this section.~~

(b) ~~An insurer may by contract delegate to a 3rd party the obligation to perform the functions required under par. (a) with respect to insurance intermediaries under contract with or employed by the 3rd party.~~

(c) ~~If an insurer contracts with a 3rd party under subd. 1, the insurer shall make reasonable inquiry to ensure that the 3rd party is performing the functions required under par. (a) and shall take any reasonable action under the circumstances to enforce the contractual obligation to perform the functions. An insurer~~

~~with which the insurer contracts under~~ ~~par. (c)~~

① may comply with its obligation to make reasonable inquiry ⁱⁿ ~~by~~ ^{ways} all of the
 ② following:

③ ~~a. Annually ~~checking~~ from a senior manager of the 3rd party a certification~~
 ④ ~~that the 3rd party is performing the functions. The senior manager who provides the~~
 ⑤ ~~certification must have responsibility for the delegated functions and a reasonable~~
 ⑥ basis to believe that the certification is true and accurate.

⑦ ~~Periodically reviewing selected 3rd parties~~ based on reasonable selection
 ⑧ criteria, ^{periodically selects 3rd parties contracting under} to determine whether the 3rd parties are performing the required functions.

⑨ The insurer shall perform ^{those} ~~any~~ procedures ^{to conduct the reviews} that are reasonable under the
 ⑩ circumstances ~~to conduct the reviews~~.

⑪ ~~(c) Paragraph (a) does not require an insurer to do any of the following:~~

12 1. Review, or provide for the review of, all insurance intermediary solicited
 13 transactions.

14 2. Include in its ^{of supervision an insurance intermediary's} ~~supervisory~~ system ~~under paragraph~~ recommendations made to
 15 senior consumers ~~by insurance intermediaries~~ of products other than ~~the insurer's~~
 16 annuities ^{offered by the insurer, general agent, or independent}

⑪ ^{⑧ → 5} ~~(a)~~ REMEDIAL MEASURES. The commissioner may do any of the following:

18 (a) Order an insurer to take reasonably appropriate corrective action for any
 19 senior consumer harmed by a violation of this section by the insurer or the insurer's
 20 insurance intermediary.

21 (b) Order an insurance intermediary to take reasonably appropriate corrective
 22 action for any senior consumer harmed by a violation of this section by the insurance
 23 intermediary. ^{general agent or independent agency}

24 (c) Order a ~~person~~ ^{person} that employs or contracts with an insurance intermediary
 25 to sell, or solicit the sale of, annuities to senior consumers to take reasonably

Insert 5-b

Insert 5-11

Insert 5-16

(c) for reviews

appropriate corrective action for any senior consumer harmed by a violation of this section by the insurance intermediary.

~~③ ① → ⑥ ← ⑤~~ PENALTIES; MITIGATION. (a) An insurer's license may be suspended or revoked for a violation of sub. (3) if the insurer fails to correct the violation within 90 days after the commissioner mails notice to the insurer of the violation. An insurer may mitigate any other penalty for a violation of sub. (3), including a forfeiture, if it establishes that it promptly, under all of the circumstances, corrected the violation after its senior management became aware, or should reasonably have been aware, of the violation.

***NOTE: Should this refer to the insurer's "certificate of authority" instead of "license"?

~~⑩~~ (b) A penalty for a violation of ~~this section~~, including a forfeiture, may be reduced or eliminated to the extent provided by rule of the commissioner if ~~after the~~ ~~violation is discovered~~ corrective action is ~~promptly~~ taken for the senior consumer.

(c) The commissioner may promulgate rules related to the reduction or elimination of penalties for violations of this section on the basis of prompt action taken to correct any harm caused to senior consumers by the violations.

~~⑬~~ ⑧ → ⑦ ← ⑥ RECORD KEEPING. An insurer and an insurance intermediary shall maintain, or be able to make available to the commissioner, records of the information collected from a senior consumer and other information used in making a recommendation that was the basis for an insurance transaction for 6 years after the insurance transaction is completed by the insurer, except as otherwise permitted by the commissioner by rule. An insurer may, but is not required to, maintain records on behalf of an insurance intermediary.

~~⑮~~ ⑧ ← ⑦ EXEMPTIONS. This section does not apply to any of the following:

promptly after the violation is discovered

(a) Direct response solicitations in which no recommendation is made based on information collected from the senior consumer.

***NOTE: Is this necessary? It would seem to be excluded by definition since the requirement in sub. (2) only applies to recommendations made. Or does this paragraph mean that a recommendation is made but it is not based on information from the senior consumer?

(b) Recommendations related to contracts used to fund any of the following:

1. An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act.

2. A plan described in section 401 (a) or (k), 403 (b), or 408 (k) or (p) of the Internal Revenue Code, if the plan is established or maintained by an employer.

3. A government or church plan as defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code.

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

5. A settlement or assumption of liability associated with personal injury litigation or any dispute or claim resolution process.

6. A formal prepaid funeral or burial contract.

***NOTE: I added the word "burial" since these contracts are called "burial agreements" in ch. 445.

(8) ALTERNATE COMPLIANCE. Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability satisfy the requirements under sub. (2) for recommending variable annuities. Nothing in this subsection, however, limits the commissioner's ability to enforce this section.

21

SECTION 3. Initial applicability.

auto ref AI
(to Ins 8-3)

auto ref A7 (to Ins 8-3)
↓

- ① (1) SUITABILITY OF ANNUITY RECOMMENDATIONS. The treatment of section 628.347
2 of the statutes first applies to recommendations for the purchase or exchange of
3 annuities that are made on the effective date of this subsection.

4

(END)

✓
Insert 8-3

d-note
↓

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3140/P2ins
PJK:jld:jf

INSERT A

† The bill makes a few miscellaneous changes including: specifically providing that orders of the commissioner may be for remedial measures or restitution; clarifying that, in addition to information obtained from insurance regulators, the office of the commissioner of insurance (OCI) may refuse to disclose and prevent any other person from disclosing information provided by OCI to those insurance regulators; limiting the amount that an insurance corporation may invest in a subsidiary; and removing an exemption for payment of extraordinary dividends by a domestic insurer to a domestic insurer from a requirement to report the payment to the commissioner at least 30 days in advance.

(END OF INSERT A)

INSERT 2-4

1083

1 SECTION 1. 601.41 (4) (a) of the statutes is renumbered 601.41 (4) (a) (intro.)

2 and amended to read:

3 601.41 (4) (a) (intro.) The commissioner shall issue such prohibitory,
4 mandatory, and other orders as are necessary to secure compliance with the law. An

5 order requiring remedial measures or restitution may include: any of the following

History: 1977 c. 339 s. 43; 1979 c. 89, 102, 177; 1983 a. 358 s. 14; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 247; 1989 a. 187 s. 29; 1989 a. 201, 336; 1991 a. 39; 1993 a. 16; 1995 a. 201; 1997 a. 27, 51, 252; 1999 a. 30 s. 672; 2001 a. 16, 65, 109.

6 SECTION 2. 601.41 (4) (a) 1. of the statutes is created to read:

7 601.41 (4) (a) 1. Remedial measures or restitution under s. ^{628.347}~~632.347~~ (5).

8 SECTION 3. 601.41 (4) (a) 2. of the statutes is created to read:

9 601.41 (4) (a) 2. Remedial measures or restitution to enforce s. 611.72 or ch.
10 617, including seizure or sequestering of voting securities of an insurer owned
11 directly or indirectly by a person who has acquired or who is proposing to acquire
12 voting securities in violation of s. 611.72 or ch. 617.

13 SECTION 4. 601.465 (3) (intro.) of the statutes is amended to read:

14 601.465 (3) (intro.) Testimony, reports, records, communications, and
15 information that are obtained by the office from, or provided by the office to, any of



Ans 2-4 could 2003

the following, under a pledge of confidentiality or for the purpose of assisting in the conduct of an investigation or examination:

History: 1991 a. 269; 1999 a. 30.

SECTION 5. 611.26 (4) of the statutes is renumbered 611.26 (4) (intro.) and amended to read:

611.26 (4) OTHER SUBSIDIARIES. (intro.) An insurance corporation may form or acquire other subsidiaries than those under subs. (1) to (3). The investment in such subsidiaries may be counted toward satisfaction of the compulsory surplus requirement of s. 623.11 and the security surplus standard of s. 623.12 to the extent that the investment is a part of the leeway investments of s. 620.22 (9) for the first \$200,000,000 of assets or to the extent that the investment is within the limitations under s. 620.23 (2) (a) and (b) for other assets. The commissioner may limit investment in subsidiaries under this subsection by rule or order. Unless approved by the commissioner, an insurance corporation may not do any of the following:

History: 1971 c. 260; 1979 c. 279 s. 9; 1981 c. 307; 1999 a. 30.

SECTION 6. 611.26 (4) (a) of the statutes is created to read:

611.26 (4) (a) Invest in a subsidiary more than the lesser of 10 percent of its assets or 50 percent of its capital and surplus. *whichever is less*

SECTION 7. 611.26 (4) (b) of the statutes is created to read:

611.26 (4) (b) Invest in a subsidiary to the extent that the insurer's capital and surplus with regard to policyholders will not be reasonable in relation to the insurer's outstanding liabilities or adequate to meet the insurer's financial needs.

SECTION 8. 617.225 (1) of the statutes is amended to read:

617.225 (1) ~~Except as provided under sub. (5), a~~ domestic insurer may not pay an extraordinary dividend to its shareholders and an affiliate of the insurer may not accept an extraordinary dividend unless the insurer reports the extraordinary



ins 2-4 contd 303

1 dividend to the commissioner at least 30 days before payment and the commissioner
2 does not disapprove the extraordinary dividend within that period.

History: 1987 a. 167.

3 **SECTION 9.** 617.225 (5) [✓] of the statutes is repealed.

(END OF INSERT 2-4)

INSERT 3-12

4 ^{NO} An insurance intermediary, or insurer if no intermediary is involved, has no
5 obligation under par. ^Δ(a) to a senior consumer related to a recommendation if the ^{NO}

(END OF INSERT 3-12)

INSERT 4-1

6 ^{NO} Any recommendation of an insurer or insurance intermediary that, under par.
7 (c), [✓] is not subject to the obligation under par. (a) ^{NO}

(END OF INSERT 4-1)

INSERT 4-8

8 ^{NO} is established and maintained by complying with pars. (c) to (e), [✓] or shall
9 establish and maintain such a system, which shall include ^{NO}

(END OF INSERT 4-8)

INSERT 4-11

10 (b) A general agent or independent agency either shall adopt a system
11 established by an insurer to supervise recommendations of its insurance
12 intermediaries that is reasonably designed to achieve compliance with this section,
13 or shall establish and maintain such a system, which shall include at least all of the
14 following:



Ins 4-11 contd

- 1 *4* 1. Maintaining written procedures.✓
2 *4* 2. Conducting periodic reviews of records that are reasonably designed to assist
3 in detecting and preventing violations of this section.✓

(END OF INSERT 4-11)

INSERT 4-13

- 4 *(NO)*, which may be a general agent or independent agency, to establish and
5 maintain a system of supervision as *(NO)*

(END OF INSERT 4-13)

INSERT 5-6

- 6 *(4)* 1. The insurer annually obtains from a senior manager of the ✓ 3rd party who
7 has responsibility for the delegated functions a representation ✓ that the 3rd party is
8 performing the required functions and that the senior manager has a reasonable
9 basis for making the representation.

(END OF INSERT 5-6)

INSERT 5-11

10 (e) An insurer that contracts with a 3rd party under par. (c) ✓ and that complies
11 with the supervisory requirement under par. ✓ (d) satisfies its responsibilities under
12 par. (a) as to insurance intermediaries under contract with or employed by the 3rd
13 party.

14 (f) An insurer is not required under ✓ par. (a), and a general agent or independent
15 agency is not required under par. (b) ✓, to do any of the following:

(END OF INSERT 5-11)

~~INSERT 5-10~~

Insert 5-16

1 (g) A general agent or independent agency contracting with an insurer under
2 par. (c) shall promptly, upon request by the insurer under par. (d), provide a
3 representation as described in par. (d) 1. or give a clear statement that it is unable
4 to meet the representation criteria.

5 (h) No person may provide a representation under par. (d) 1. unless the person
6 satisfies all of the following:

7 1. The person is a senior manager with responsibility for the delegated
8 functions.

9 2. The person has a reasonable basis for making the representation.

10 (4) NATIONAL ASSOCIATION OF SECURITIES DEALERS CONDUCT RULES. Compliance
11 with the National Association of Securities Dealers Conduct Rules pertaining to
12 suitability satisfy the requirements under subs. ²(~~1~~) and ³(~~2~~) for the recommendation
13 of variable annuities. Nothing in this subsection, however, limits the commissioner's
14 ability to enforce this section.

(END OF INSERT 5-16)

INSERT 6-9

15 (6) PENALTIES; MITIGATION. (a) Any person who violates this section is subject
16 to the penalties provided under s. 601.64, suspension or revocation of a license or
17 certificate of authority, and an order under s. 601.41 (4).

(END OF INSERT 6-9)

INSERT 8-3

18 **SECTION 10. Effective dates.** This act takes effect on the day after publication,
19 except as follows:

↓

Ins 8-3 contd

1 (1) SUITABILITY OF ANNUITY RECOMMENDATIONS. The treatment of section 628.347 ✓
2 from p. 7, auto ref ✓ auto ref, from p. 8 ✓
3 of the statutes and SECTION A1 (A2) of this act take effect on the first day of the 7th
month beginning after publication.

(END OF INSERT 8-3)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3140/P2dn

PJK:jld:jf

stays

I have not include^d an "initial applicability" provision for the treatment of s. 601.41 (4) (a) or 601.465 (3) (intro.). The proposed language was not *initial* applicability but *applicability* language. If you really think that it is absolutely necessary to include it, I can include it in the statutes by saying s. 601.41 (4) (a) applies to orders issued at any time with respect to violations occurring at any time, and that s. 601.465 (3) (intro.) applies to communications, etc., received or provided at any time. ^{that} It really shouldn't be necessary, though.

Pamela J. Kahler
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E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3140/P2dn
PJK:jld:jf

October 27, 2003

I have not included an "initial applicability" provision for the treatment of s. 601.41 (4) (a) or 601.465 (3) (intro.). The proposed language was not *initial* applicability but *applicability* language. If you really think that it is absolutely necessary to include it, I can include it in the statutes by saying that s. 601.41 (4) (a) applies to orders issued at any time with respect to violations occurring at any time, and that s. 601.465 (3) (intro.) applies to communications, etc., received or provided at any time. It really shouldn't be necessary, though.

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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3140/P2
PJK:jld:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to repeal* 617.225 (5); *to renumber and amend* 601.41 (4) (a) and
2 611.26 (4); *to amend* 601.465 (3) (intro.) and 617.225 (1); and *to create* 601.41
3 (4) (a) 1., 601.41 (4) (a) 2., 611.26 (4) (a), 611.26 (4) (b) and 628.347 of the
4 statutes; **relating to:** requirements for recommendations made by insurers
5 and insurance intermediaries to senior consumers in annuity transactions,
6 other miscellaneous changes to insurance provisions, and granting
7 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill prohibits an insurance intermediary, or insurer if no intermediary is involved, from making a recommendation to a person who is 65 years old or older (senior consumer) about purchasing or exchanging an annuity unless the intermediary or insurer has reasonable grounds to believe that the recommendation is suitable for the senior consumer based on facts disclosed by the senior consumer. Before making a recommendation, the intermediary or insurer must make reasonable efforts to obtain information from the senior consumer about his or her financial status, tax status, and investment objectives.

The bill requires insurers either to ensure that a system for supervising annuity transaction recommendations that are made to senior consumers is established and maintained or to establish and maintain its own system, and

provides certain requirements with which the supervisory system must comply. The bill authorizes the commissioner of insurance (commissioner) to order an insurer or intermediary to take corrective action if a senior consumer is harmed by a violation of the provisions regulating annuity transaction recommendations and authorizes the commissioner to promulgate rules to reduce or eliminate penalties for violations of the provisions if, after a violation is discovered, corrective action is promptly taken for the senior consumer.

The bill makes a few miscellaneous changes including: specifically providing that orders of the commissioner may be for remedial measures or restitution; clarifying that, in addition to information obtained from insurance regulators, the Office of the Commissioner of Insurance (OCI) may refuse to disclose and prevent any other person from disclosing information provided by OCI to those insurance regulators; limiting the amount that an insurance corporation may invest in a subsidiary; and removing an exemption for payment of extraordinary dividends by a domestic insurer to a domestic insurer from a requirement to report the payment to the commissioner at least 30 days in advance.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 601.41 (4) (a) of the statutes is renumbered 601.41 (4) (a) (intro.)
2 and amended to read:

3 601.41 (4) (a) (intro.) The commissioner shall issue such prohibitory,
4 mandatory, and other orders as are necessary to secure compliance with the law. An
5 order requiring remedial measures or restitution may include any of the following:

6 **SECTION 2.** 601.41 (4) (a) 1. of the statutes is created to read:

7 601.41 (4) (a) 1. Remedial measures or restitution under s. 628.347 (5).

8 **SECTION 3.** 601.41 (4) (a) 2. of the statutes is created to read:

9 601.41 (4) (a) 2. Remedial measures or restitution to enforce s. 611.72 or ch.
10 617, including seizure or sequestering of voting securities of an insurer owned
11 directly or indirectly by a person who has acquired or who is proposing to acquire
12 voting securities in violation of s. 611.72 or ch. 617.

13 **SECTION 4.** 601.465 (3) (intro.) of the statutes is amended to read:

1 601.465 (3) (intro.) Testimony, reports, records, communications, and
2 information that are obtained by the office from, or provided by the office to, any of
3 the following, under a pledge of confidentiality or for the purpose of assisting in the
4 conduct of an investigation or examination:

5 **SECTION 5.** 611.26 (4) of the statutes is renumbered 611.26 (4) (intro.) and
6 amended to read:

7 611.26 (4) OTHER SUBSIDIARIES. (intro.) An insurance corporation may form or
8 acquire other subsidiaries than those under subs. (1) to (3). The investment in such
9 subsidiaries may be counted toward satisfaction of the compulsory surplus
10 requirement of s. 623.11 and the security surplus standard of s. 623.12 to the extent
11 that the investment is a part of the leeway investments of s. 620.22 (9) for the first
12 \$200,000,000 of assets or to the extent that the investment is within the limitations
13 under s. 620.23 (2) (a) and (b) for other assets. The commissioner may limit
14 investment in subsidiaries under this subsection by rule or order. Unless approved
15 by the commissioner, an insurance corporation may not do any of the following:

16 **SECTION 6.** 611.26 (4) (a) of the statutes is created to read:

17 611.26 (4) (a) Invest in a subsidiary more than 10 percent of its assets or 50
18 percent of its capital and surplus, whichever is less.

19 **SECTION 7.** 611.26 (4) (b) of the statutes is created to read:

20 611.26 (4) (b) Invest in a subsidiary to the extent that the insurer's capital and
21 surplus with regard to policyholders will not be reasonable in relation to the insurer's
22 outstanding liabilities or adequate to meet the insurer's financial needs.

23 **SECTION 8.** 617.225 (1) of the statutes is amended to read:

24 617.225 (1) ~~Except as provided under sub. (5), a~~ A domestic insurer may not
25 pay an extraordinary dividend to its shareholders and an affiliate of the insurer may

1 not accept an extraordinary dividend unless the insurer reports the extraordinary
2 dividend to the commissioner at least 30 days before payment and the commissioner
3 does not disapprove the extraordinary dividend within that period.

4 **SECTION 9.** 617.225 (5) of the statutes is repealed.

5 **SECTION 10.** 628.347 of the statutes is created to read:

6 **628.347 Suitability of annuity sales to senior consumers. (1)**

7 DEFINITIONS. In this section:

8 (a) “Annuity” means a fixed or variable annuity that is individually solicited,
9 whether the product is classified as individual or group.

10 (b) “Senior consumer” means a person who is 65 years of age or older. The term
11 includes any joint owner of an annuity who is less than 65 years of age if at least one
12 joint owner is 65 years of age or older, and any prospective joint purchaser of an
13 annuity who is less than 65 years of age if at least one prospective joint purchaser
14 is 65 years of age or older.

15 **(2) DUTIES OF INSURERS AND INSURANCE INTERMEDIARIES WITH REGARD TO**
16 **RECOMMENDATIONS.** (a) Except as provided in par. (c), an insurance intermediary, or
17 insurer if no intermediary is involved, may not recommend to a senior consumer the
18 purchase or exchange of an annuity if the recommendation results in another
19 insurance transaction or series of insurance transactions unless the intermediary or
20 insurer has reasonable grounds to believe that the recommendation is suitable for
21 the senior consumer on the basis of facts disclosed by the senior consumer as to his
22 or her investments, other insurance products, and financial situation and needs.

23 (b) Before making a recommendation described in par. (a), an insurance
24 intermediary, or insurer if no intermediary is involved, shall make reasonable efforts
25 to obtain information concerning all of the following:

- 1 1. The senior consumer's financial status.
- 2 2. The senior consumer's tax status.
- 3 3. The senior consumer's investment objectives.
- 4 4. Any other information that is reasonably appropriate for determining the
- 5 suitability of a recommendation to the senior consumer.

6 (c) An insurance intermediary, or insurer if no intermediary is involved, has no
7 obligation under par. (a) to a senior consumer related to a recommendation if the
8 senior consumer does any of the following:

- 9 1. Refuses to provide relevant information requested by the insurer or
- 10 insurance intermediary.
- 11 2. Fails to provide complete or accurate information.
- 12 3. Decides to enter into an insurance transaction that is not based on a
- 13 recommendation of the insurer or insurance intermediary.

14 (d) Any recommendation of an insurer or insurance intermediary that, under
15 par. (c), is not subject to the obligation under par. (a) shall be reasonable under all
16 circumstances actually known to the insurer or insurance intermediary at the time
17 the recommendation is made.

18 **(3) INSURER'S SUPERVISORY RESPONSIBILITY.** (a) An insurer either shall ensure
19 that a system to supervise recommendations that is reasonably designed to achieve
20 compliance with this section is established and maintained by complying with pars.
21 (c) to (e), or shall establish and maintain such a system, which shall include at least
22 all of the following:

- 23 1. Maintaining written procedures.
- 24 2. Conducting periodic reviews of its records that are reasonably designed to
- 25 assist in detecting and preventing violations of this section.

1 (b) A general agent or independent agency either shall adopt a system
2 established by an insurer to supervise recommendations of its insurance
3 intermediaries that is reasonably designed to achieve compliance with this section,
4 or shall establish and maintain such a system, which shall include at least all of the
5 following:

6 1. Maintaining written procedures.

7 2. Conducting periodic reviews of records that are reasonably designed to assist
8 in detecting and preventing violations of this section.

9 (c) An insurer may contract with a 3rd party, which may be a general agent or
10 independent agency, to establish and maintain a system of supervision as required
11 under par. (a) with respect to insurance intermediaries under contract with or
12 employed by the 3rd party.

13 (d) An insurer shall make reasonable inquiry to ensure that any 3rd party with
14 which the insurer contracts under par. (c) is performing the functions required under
15 par. (a) and shall take such action as is reasonable under the circumstances to enforce
16 the contractual obligation to perform the functions. An insurer may comply with its
17 obligation to make reasonable inquiry in all of the following ways:

18 1. The insurer annually obtains from a senior manager of the 3rd party who
19 has responsibility for the delegated functions a representation that the 3rd party is
20 performing the required functions and that the senior manager has a reasonable
21 basis for making the representation.

22 2. The insurer, based on reasonable selection criteria, periodically selects 3rd
23 parties contracting under par. (c) for reviews to determine whether the 3rd parties
24 are performing the required functions. The insurer shall perform those procedures
25 to conduct the reviews that are reasonable under the circumstances.

1 (e) An insurer that contracts with a 3rd party under par. (c) and that complies
2 with the supervisory requirement under par. (d) satisfies its responsibilities under
3 par. (a) as to insurance intermediaries under contract with or employed by the 3rd
4 party.

5 (f) An insurer is not required under par. (a), and a general agent or independent
6 agency is not required under par. (b), to do any of the following:

7 1. Review, or provide for the review of, all insurance intermediary solicited
8 transactions.

9 2. Include in its system of supervision an insurance intermediary's
10 recommendations made to senior consumers of products other than annuities offered
11 by the insurer, general agent, or independent agency.

12 (g) A general agent or independent agency contracting with an insurer under
13 par. (c) shall promptly, upon request by the insurer under par. (d), provide a
14 representation as described in par. (d) 1. or give a clear statement that it is unable
15 to meet the representation criteria.

16 (h) No person may provide a representation under par. (d) 1. unless the person
17 satisfies all of the following:

18 1. The person is a senior manager with responsibility for the delegated
19 functions.

20 2. The person has a reasonable basis for making the representation.

21 (4) NATIONAL ASSOCIATION OF SECURITIES DEALERS CONDUCT RULES. Compliance
22 with the National Association of Securities Dealers Conduct Rules pertaining to
23 suitability satisfy the requirements under subs. (2) and (3) for the recommendation
24 of variable annuities. Nothing in this subsection, however, limits the commissioner's
25 ability to enforce this section.

1 (5) REMEDIAL MEASURES. The commissioner may do any of the following:

2 (a) Order an insurer to take reasonably appropriate corrective action for any
3 senior consumer harmed by a violation of this section by the insurer or the insurer's
4 insurance intermediary.

5 (b) Order an insurance intermediary to take reasonably appropriate corrective
6 action for any senior consumer harmed by a violation of this section by the insurance
7 intermediary.

8 (c) Order a general agent or independent agency that employs or contracts with
9 an insurance intermediary to sell, or solicit the sale of, annuities to senior consumers
10 to take reasonably appropriate corrective action for any senior consumer harmed by
11 a violation of this section by the insurance intermediary.

12 (6) PENALTIES; MITIGATION. (a) Any person who violates this section is subject
13 to the penalties provided under s. 601.64, suspension or revocation of a license or
14 certificate of authority, and an order under s. 601.41 (4).

15 (b) A penalty under par. (a) for a violation of sub. (2) (a), (b), or (d), including
16 a forfeiture, may be reduced or eliminated to the extent provided by rule of the
17 commissioner if corrective action is taken for the senior consumer promptly after the
18 violation is discovered.

19 (c) The commissioner may promulgate rules related to the reduction or
20 elimination of penalties for violations of this section on the basis of prompt action
21 taken to correct any harm caused to senior consumers by the violations.

22 (7) RECORD KEEPING. An insurer and an insurance intermediary shall maintain,
23 or be able to make available to the commissioner, records of the information collected
24 from a senior consumer and other information used in making a recommendation
25 that was the basis for an insurance transaction for 6 years after the insurance

1 transaction is completed by the insurer, except as otherwise permitted by the
2 commissioner by rule. An insurer may, but is not required to, maintain records on
3 behalf of an insurance intermediary.

4 **(8) EXEMPTIONS.** This section does not apply to any of the following:

5 (a) Direct response solicitations in which no recommendation is made based on
6 information collected from the senior consumer.

7 (b) Recommendations related to contracts used to fund any of the following:

8 1. An employee pension or welfare benefit plan that is covered by the federal
9 Employee Retirement and Income Security Act.

10 2. A plan described in section 401 (a) or (k), 403 (b), or 408 (k) or (p) of the
11 Internal Revenue Code, if the plan is established or maintained by an employer.

12 3. A government or church plan as defined in section 414 of the Internal
13 Revenue Code, a government or church welfare benefit plan, or a deferred
14 compensation plan of a state or local government or tax exempt organization under
15 section 457 of the Internal Revenue Code.

16 4. A nonqualified deferred compensation arrangement established or
17 maintained by an employer or plan sponsor.

18 5. A settlement or assumption of liability associated with personal injury
19 litigation or any dispute or claim resolution process.

20 6. A formal prepaid funeral or burial contract.

21 **SECTION 11. Initial applicability.**

22 (1) **SUITABILITY OF ANNUITY RECOMMENDATIONS.** The treatment of section 628.347
23 of the statutes first applies to recommendations for the purchase or exchange of
24 annuities that are made on the effective date of this subsection.

SECTION 12. Effective dates. This act takes effect on the day after publication, except as follows:

(1) SUITABILITY OF ANNUITY RECOMMENDATIONS. The treatment of section 628.347 of the statutes and SECTION 11 (1) of this act take effect on the first day of the 7th month beginning after publication.

(END)